



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 21, 2003

Mr. Cary L. Bovey
Bovey, Akers & Bojorquez, L.L.P.
12325 Hymeadow Drive, Suite 3-200
Austin, Texas 78750

OR2003-7537

Dear Mr. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189759.

The City of Llano Police Department (the "department"), which you represent, received a request for the name of the individual who reported the requestor to the department. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that most of the submitted information is not responsive to the instant request for information. We have marked this information, which the department need not release in response to this request.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the reported incident did not result in a conviction or deferred adjudication. You further indicate that the investigation has concluded. Therefore, we agree that section 552.108(a)(2) is applicable to the requested information.

We note, however, that section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. -Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We observe that the identity of the complainant is generally considered basic information. Open Records Decision 127 at 4 (1976).

You claim that the complainant's identifying information in this case should not be released pursuant to the informer's privilege under section 552.101 of the Government Code.¹ See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). However, the informer's privilege does not categorically protect from release the identification and description of a complainant. The identity of a complainant, whether an "informant" or not, may only be withheld upon a showing that special circumstances exist. See Open Records Decision No. 169 (1977).

This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* Based upon the information provided to this office in this instance, however, we find that you have not shown special circumstances sufficient to overcome the presumption of public access to the complainant's identity. Consequently, we conclude that the department may not withhold information identifying the complainant, as it constitutes relevant basic front page information. Thus, the requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common-law informer's privilege.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 189759

Enc. Submitted documents

c: Ms. Linda Tow
800 West Llano Street
Llano, Texas 78643
(w/o enclosures)